

# MEMORANDUM



**Date:** September 21, 2017  
**To:** Mayor Tran and Members of the City Council  
**From:** Tina Murphy, Director of Human Resources; Christopher J. Diaz, City Attorney  
**Subject:** Adopt a Resolution Appointing Steve Pangelinan as Interim City Manager Pursuant to Government Code Sections 7522.56 and 21221(h) and Approving Amended Employment Agreement

## **Background:**

The City Manager resigned effective September 15, 2017. Steve Pangelinan has previously served as the City's Chief of Police. He has also served as Acting City Manager under the authority of Government Code Section 21224 and currently serves as Interim Chief of Police under the authority of Government Code Section 21221(h). Mr. Pangelinan retired from the City effective December 30, 2016 and resigned from his position as Acting City Manager concurrently with the resignation of the City Manager.

Staff is recommending hiring Mr. Pangelinan on a part-time, interim basis to perform specific duties of the City Manager position until a permanent appointment to the vacant position is made unless earlier terminated. His hours for both the Interim Chief of Police position and the Interim City Manager position will not exceed 960 hours combined per fiscal year. The foregoing limitation will also include the hours he performed as Acting City Manager from July 1, 2017 through the date of his resignation on September 15, 2017.

Government Code Sections 21221(h) and 7522.56(d) address the temporary employment of retirees in accordance with the California Public Employees' Retirement System (CalPERS). These sections permit the City Council to appoint a CalPERS retiree to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year.

Due to his experience in law enforcement and City management, staff recommends that the City appoint Mr. Pangelinan to the position of interim City Manager pending the recruitment of a permanent City Manager. The combined total hours to be served by Mr. Pangelinan for all CalPERS employers and all retiree appointments will not exceed 960 hours in any fiscal year. Staff has worked with the City Attorney to ensure that additional requirements, such as ones that relate to compensation, will be met.

Included in the Council's agenda packet is the required resolution to appoint a retiree pursuant to Government Code Sections 7522.56 and 21221(h) and a form of the Amended Employment Agreement for Mr. Pangelinan which has been restated to include the duties of the interim City Manager appointment.

**Fiscal Impact:** Mr. Pangelinan would be paid an hourly rate of \$115.38 per hour, which is less than the maximum salary for the City Manager position, subject to any recommendation by CalPers. He will not be entitled to any benefits, vacation, or holidays.

## **Recommendation:**

Adopt resolution appointing Steve Pangelinan as interim City Manager pursuant to Government Code Sections 7522.56 and 21221(h) and approving the amended employment agreement.

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPOINTING STEVE PANGELINAN AS INTERIM CITY MANAGER PURSUANT TO GOVERNMENT CODE SECTIONS 7522.56 AND 21221(h) AND APPROVING AMENDED EMPLOYMENT AGREEMENT**

**WHEREAS**, Government Code Sections 21221(h) and 7522.56(d) address the temporary employment of retirees in accordance with the California Public Employees' Retirement System (CalPERS) and permit the City Council to appoint a CalPERS retiree to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

**WHEREAS**, the position of City Manager for the City of Milpitas is currently vacant and the City is actively recruiting for this vacancy and needs to fill the position on a temporary basis to prevent stoppage of public business until a permanent replacement is hired; and

**WHEREAS**, during the recruitment, selection and employment of a City Manager, the City Council desires to appoint Steve Pangelinan as an interim appointment retired annuitant to the vacant position of City Manager for the City under Government Code section 21221(h), effective September 21, 2017, to provide the leadership, managerial and organizational skills necessary to manage the City effectively and efficiently; and

**WHEREAS**, Steve Pangelinan has many years of law enforcement and management experience with an extensive history in leading and managing public agencies, including previously serving as Chief of Police and Acting City Manager for the City, and currently serving as Interim Chief of Police; and

**WHEREAS**, an appointment under Government Code section 21221(h) requires an active, publicly posted recruitment for a permanent replacement; and

**WHEREAS**, the current status of this recruitment is as follows: The recruitment is currently active and open. The City posted the advertisement for City Manager at 11:00 a.m. on September 21, 2017, and is currently accepting applications. Applicants can apply on-line through the City of Milpitas website at [www.ci.milpitas.ca.gov/jobs](http://www.ci.milpitas.ca.gov/jobs) or through the CalOpps website at [www.calopps.org](http://www.calopps.org).

**WHEREAS**, it is understood by the City and Steve Pangelinan that he will continue to serve as Interim Chief of Police under a previous appointment by the City pending the recruitment for a permanent appointment; and

**WHEREAS**, it is understood by the City and Steve Pangelinan that the combined total hours to be served by Steve Pangelinan in any fiscal year, for all positions and for all CalPERS employers combined, shall not exceed the 960-hour limitation set forth in California Government Code Section 21221(h) and Section 7522.56(d); and

**WHEREAS**, this Government Code Section 21221(h) appointment shall only be made once and therefore will end on the date immediately preceding the date on which the permanent appointment to the vacant position of City Manager for the City commences his or her employment or, if earlier, the date that this appointment is terminated by the City or Steve Pangelinan; and

**WHEREAS**, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

**WHEREAS**, the hourly rate to be paid to Steve Pangelinan for performance of the City Manager position is \$115.38, subject to any recommended change by CalPers, which is not less than the minimum or in excess of the maximum hourly rate paid to other employees performing comparable duties; and

**WHEREAS**, Steve Pangelinan has not and will not receive any other benefit, incentive, compensation in lieu

of benefit or any other form of compensation in addition to this hourly pay rate; and

**WHEREAS**, the City Council has reviewed a proposed amended employment agreement by and between Steve Pangelinan and the City.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. All facts set forth in the background section of this Resolution are true and correct.
2. Steve Pangelinan has the specialized skills needed to perform the work required of fulfill the responsibilities of the vacant position of City Manager until a permanent City Manager is appointed and thereafter begins his or her service.
3. The City Council hereby appoints Steve Pangelinan as interim City Manager effective September 21, 2017 pursuant to the authority provided under Government Code Sections 21221(h) and 7522.56, during the recruitment, selection and employment of a permanent City Manager, to provide the critically-needed, specialized skills necessary to manage the City.
4. The amended employment agreement with Steve Pangelinan, a copy of which is on file with the City Clerk, is approved by the City Council, effective September 21, 2017.
5. The Mayor is authorized to execute said agreement on behalf of the City, with such technical amendments as may be deemed appropriate by the Mayor and City Attorney.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Rich Tran, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

## **AGREEMENT FOR TEMPORARY EMPLOYMENT**

THIS AMENDED AGREEMENT is between the CITY OF MILPITAS, State of California, a municipal corporation ("City"), and Steve Pangelinan, an individual ("Employee") (collectively, the "Parties") and is effective at 12:00 a.m. on September 21, 2017. This Agreement supersedes previous employment agreements between the parties, including the Agreement for Temporary Employment between the Parties effective May 30, 2017.

### **Recitals**

WHEREAS, Pursuant to Resolution No. 8635, Employee was appointed to the vacant position of Chief of Police effective January 18, 2017 and such appointment is to terminate on December 31, 2017 unless earlier terminated.

WHEREAS, Employee's current employment as interim Chief of Police is authorized by Government Code section 21221(h), which permits the City to appoint a CalPERS retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent replacement; and

WHEREAS, the City has a vacancy at the position of City Manager, a regular position for which the City is conducting a recruitment for a permanent appointment; and

WHEREAS, the City has an immediate need for an employee to temporarily perform the position of City Manager, a position involving specialized skills and training and which is critically necessary to the on-going duties and functions of the City;

WHEREAS, Employee is competent and qualified to perform the services required by this Agreement, and City wishes to have Employee perform the City Manager duties on an interim basis; and

WHEREAS, Employee's employment as interim City Manager is authorized by Government Code section 21221(h), which permits the City to appoint a CalPERS retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent replacement.

NOW, THEREFORE, the parties do mutually agree as follows:

### **Agreement**

1. **Appointment and Scope of Services:** Employee has been appointed as interim Chief of Police and interim City Manager by the City Council, and shall temporarily perform the functions of those positions, which are positions involving highly-specialized and critically-needed skills set forth in the attached job descriptions, in the Milpitas Municipal Code and as provided by law. Such employment is "at will," subject to the terms of this Agreement, and Employee shall perform said duties at the pleasure of and under the direct supervision of the City Council.

2. Compensation and Work Schedule:

Rate of Pay: Employee shall be paid at the rate of \$115.38 per hour. The City has confirmed that this rate is not less than the minimum, nor in excess of the maximum, paid by the City to other employees performing comparable duties (divided by 173.333 to equal an hourly rate) as listed on the City's publicly-available pay schedule and publicly-available employment agreements. Payments will be made on regularly scheduled City payroll dates, and shall be subject to all applicable payroll taxes and withholdings. Such compensation shall be the sole compensation for Employee's services under this Agreement.

Work Schedule and 960-hour Limitation: Employee is expected to devote necessary time, within and outside normal business hours, to the business of the City. Pursuant to Government Code sections 21221(h) and section 7522.56, however, Employee's performance of services as retired annuitant, whether compensated or on a volunteer basis, shall not exceed 960 hours per fiscal year in all positions for all public employers that contract with CalPERS for retirement benefits. The City retains the right to designate, reduce, change, or amend the number of hours assigned to Employee consistent with the City's workload and other needs. If Employee's annual combined hours for both positions are approaching 960, then the City retains the right to summarily suspend Employee's duties under this Agreement and to reassign any scheduled hours, as needed, to ensure that Employee does not exceed the maximum hours allowed by this Agreement. Employee will be responsible for keeping track of the number of hours worked on a time sheet form provided by the City and submitting them at least every two weeks.

The position is a temporary, hourly assignment which shall not exceed 40 hours per week. The City, through the City Council, will assign Employee hours to work. Due to the nature of the position, it is understood that the work day and work week hours may vary, however Employee shall not work overtime.

3. Employment Status:

A. Benefits: Other than the compensation described above in Section 2, Employee will receive no other benefits, incentives, compensation in lieu of benefits, or any other form of compensation. Employee understands and agrees that he is not, and will not be, eligible to receive any benefits from the City, including any City group plan for hospital, surgical, or medical insurance, any City retirement program, or any paid holidays, vacation, sick leave, or other leave, with or without pay, or any other job benefits available to an employee in the regular service of the City, except for Worker's Compensation Insurance coverage or similar benefits required by law.

B. No Membership in Bargaining Unit: Employee understands that he is not a member of any bargaining unit and is not covered by the terms of any Memorandum of Understanding with any represented or unrepresented group of City employees.

C. No Property Right in Employment: Employee understands and agrees that the terms of his employment are governed only by this Agreement and that no right of regular

employment for any specific term is created by this Agreement. Employee further understands that he acquires no property interest in his employment by virtue of this agreement, that the employment is “at will” as defined by the laws of the State of California (meaning that he can be terminated at any time for any reason or for no reason), and that he is not entitled to any pre- or post-deprivation administrative hearing or other due process upon termination or any disciplinary action except as otherwise provided by law.

D. Employment of a Retiree: Employee understands that CalPERS retired annuitants may be employed by a CalPERS public agency employer, by temporary appointment to position(s) not to exceed 960 hours in any fiscal year for all such employers; either (1) during an emergency to prevent stoppage of public business, or (2) because the retired employee has skills needed in performing the work of limited duration. In the event Employee is providing service to any other CalPERS public agency employer during the term of this Agreement, Employee must notify the City of such employment and disclose on a periodic basis (at a frequency determined by the City) the number of hours Employee is performing for that other public agency to ensure that the maximum number of hours is not exceeded.

4. Representation of Employee: Employee represents that he is properly trained and certified to perform the duties required of the positions and this Agreement.
5. Effective Date and Term of Agreement: This Amended Agreement shall be effective on September 21, 2017, 2017 (“Effective Date”), and unless terminated earlier, shall terminate automatically at midnight on December 31, 2017 for the position of Interim Police Chief and December 31, 2017 for the position of Interim City Manager. Employment is temporary, at-will and may be terminated with or without cause and with or without notice at any time by the Employee or the City. Employee is not eligible for any severance payment or benefit relating to or arising out of the termination of this Agreement.
6. Non-Assignment of Agreement: This Agreement is intended to secure the individual services of the Employee and is not assignable or transferable by employee to any third party.
7. Governing Law/Venue: This Agreement shall be interpreted according to the laws of the State of California. Venue for any action or proceeding regarding this contract shall be in Santa Clara County.
8. Enforceability: If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
9. Conflict of Interest: Employee agrees that during the term of this Agreement, he will not maintain any financial interest or engage in any other contract employment, occupation, work, endeavor or association, whether compensated or not, that would in any way conflict with, or impair Employee’s ability to perform the duties described in this

Agreement. Any work performed for the City outside the terms of this Agreement must be approved in advance in writing by the City Council. Employee agrees to disclose whether he is performing work for any other CalPERS public agency employer as required by section 3.D. of this Agreement.

10. Entire Agreement and Modification: This Agreement constitutes the entire understanding of the parties hereto. This Agreement supersedes any previous contracts, agreements, negotiations or understandings, whether written or oral, between the parties. Employee shall be entitled to no other compensation or benefits than those specified herein, and Employee acknowledges that no representation, inducements or promises not contained in this Agreement have been made to Employee to induce Employee to enter into this Agreement.

No changes, amendments, or alterations hereto shall be effective unless in writing and signed by both parties. Employee understands that no oral modification of this Agreement made by any officer, agent, or employee of the City is effective. Employee specifically acknowledges that in entering into and executing this Agreement, he relies solely upon the provisions contained herein and no others.

11. Support Services and Equipment: Employee shall be provided office space and the equipment needed to perform his duties and sufficient to fulfill obligations under this Agreement, as determined by the City Council, at no cost to employee. Such equipment shall include a City-owned duty weapon, City police-equipped vehicle and City smartphone. In accordance with Government Code Section 21221(h), personal use of such equipment is not permitted.
12. Reimbursement for Expenses: Employee shall be reimbursed by City in accordance with standard City travel policy (as well as federal and state law) for all authorized and necessary travel undertaken by Employee in performance of services pursuant to this Agreement. Employee shall document and claim said reimbursement for such travel in the manner and forms required by the City. Other than as specifically provided herein, Employee shall receive no other compensation or reimbursements for expenses incurred by him in performance of this Agreement.
13. Notices: All notices permitted or required under this Agreement shall be given to the respective parties by hand-delivery or by mail at the following address, or at such other address as the respective parties may provide in writing for this purpose, by deposit in the U.S. Mail, postage pre-paid, addressed as follows:

CITY: City of Milpitas  
Attn: City Manager  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

EMPLOYEE: Steve Pangelinan  
\_\_\_\_\_  
\_\_\_\_\_

14. Indemnification: In accordance with and subject to the limitations of the California Government Claims Act and California Labor Code, the City shall defend, save harmless

and indemnify Employee against any tort, professional liability, claim or demand or other legal action, arising out of an alleged act or omission occurring in the performance of Employee's services as interim Chief Police and/or interim City Manager, except that this provision shall not apply with respect to any intentional tort or crime committed by Employee, or any actions outside the course and scope of his employment as interim Chief of Police and/or interim City Manager.

15. No Presumption of Drafter: The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.
16. Assistance of Counsel: Each party to this Agreement warrants to the other party that the party has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain such assistance.

Dated: \_\_\_\_\_

EMPLOYEE:

\_\_\_\_\_  
STEVE PANGELINAN

Dated: \_\_\_\_\_

CITY:

\_\_\_\_\_  
RICHARD TRAN, MAYOR